

**CITY**  
**OF**  
**ROCK SPRINGS**  
**ENFORCEMENT GUIDE**  
**PLAN AND PROCEDURES**

**COMPLETED**  
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**FOR REVIEW BY**  
**THE E.P.A.**

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## INTRODUCTION

This guide was developed for the City of Rock Springs officials to use who are responsible for determining the appropriate enforcement response to a specific violation of pretreatment requirements and related sections of the Clean Water Act. Our enforcement response plan will have addressed the following area's: EVALUATE LEGAL AUTHORITY, RESOURCES AND RESPONSIBILITIES, DOCUMENTATION OF ALL VIOLATIONS, SCREENING OF COMPLIANCE DATA, MAINTAIN USER INVENTORY. The guide is intended to serve two main purposes:

- 1- It covers enforcement responses that may be appropriate in relation to the nature and severity of the violation and the overall degree of non-compliance
- 2- It provides a guide to encourage a uniform application of enforcement responses to comparable levels and types of violations, and it can be used as a mechanism to review the appropriateness of responses by this enforcement agency.

### General Information:

- 1- Our enforcement program will be implemented by the Special Projects and Programs Coordinator to ensure compliance with the pretreatment standards and requirements set forth in the City passed ordinances, the Pretreatment Program Policies and Procedures Manual, and City Regulations. The basis for enforcement authority by Rock Springs City is seated in these instruments.
- 2- The measure of the effectiveness of the E.R.P. will be:
  - a. Whether the non-complying source returns to compliance as expeditiously as possible.
  - b. Whether the enforcement response establishes the appropriate deterrent effect for the particular violator and for other potential violators.
  - c. Whether the enforcement response promotes fairness of treatment as between comparable violators, as well as between complying and non-complying parties.
- 3- This guide has been developed for guidance and is not intended to create legal rights or obligations, or to limit the enforcement discretion of any of the administering agencies.
- 4- SNC. This denotes that the circumstances of a particular violation are severe enough to meet the criteria specified in the definition of SNC contained herein.
- 5- Whenever a notice or letter of violation is issued that requires a response and the industrial user fails to respond, the City of Rock Springs will issue an administrative or compliance order to require the industrial user to respond and return to compliance immediately.
- 6- The City of Rock Springs intends to use two response levels to any violation, an informal response or a formal response. At no time shall no response be adequate.
- 7- Any violation which meets the definition of Significant Non-Compliance may be considered a major violation.



8. Enforcement must be prompt to be credible.
9. Enforcement may require escalation of penalties for X # of repeat violations per year.
10. All violations shall be acted upon accordingly, required enforcement actions shall be taken.
11. A running list of Industrial User Violations and enforcement actions shall be kept for record documentation and reference.
12. Documentation of contacts with users shall be kept.
13. Definition of (SNC) Significant Non Compliance shall be used to determine compliance.
14. Industrial Users shall not be given a choice of options.
15. All actions and or notices shall be given verbally and in written context.
16. All incidents of Non-Compliance shall be followed up on to insure that compliance has been achieved.
17. A phone call to Industrial Users shall be made to notify them of any current compliance problem.
18. A TIME SCHEDULE OF EVENTS (BETWEEN ACTIONS) shall be followed to insure quick compliance on the part of both parties.
19. All enforcement actions should address the economic benefit the Industrial User may have gained by Non Compliance.
20. Penalties shall be levied on an case by case basis following the Rock Springs City Penalty Policy.
21. A Non Compliance action schedule shall be used to show the steps available or required.
22. A yearly compliance status report may be provided at request to the Industrial User.
23. Every violation should at a minimum receive a Warning Notice and or a Notice Of Violation.
24. If requested a copy of the Enforcement Guide Plan may be provided to the Industrial User. The plan shall be explained to the User.
25. Violations of any nature may receive the maximum penalty available.
26. A list of illegal discharge items shall be provided as reference to each industrial user, including all other items of concern.
27. A USER MAY NOT INTRODUCE ANY POLLUTANTS WHICH CAUSE:
  - A. PASS THROUGH OR INTERFERENCE. 40 CFR 403.5(a)(1)
  - B. ADVERSELY AFFECT THE POTW
  - C. HAVE THE POTENTIAL TO CAUSE POTW TO VIOLATE NPDES PERMIT.
  - D. POTENTIAL TO CAUSE DIFFICULTIES WITH SLUDGE USE OR DISPOSAL.
  - E. HAZARDOUS MATERIALS OF ANY NATURE.
  - F. VIOLATE SPECIFIC PROHIBITIONS IN 40 CFR 403.5 (b)(1-5)
28. The use of fines in certain cases shall be required in order to recover costs and prevent economic benefit to the I.U..
29. Permit fees shall be higher for problem I.U.'S, using past history for current determination.
30. Enforcement guide will require escalation of actions for X # repeat violations per year.
31. Each contact shall be documented.



### **Factors in Selecting the Appropriate Response:**

Industrial user violations of monitoring, reporting, and treatment requirements may range from relatively minor violations to major violations.

- 1- Selection of the appropriate enforcement response will relate to whether the violation is major or minor.
- 2- Duration of the violation.
- 3- Meeting the definition of SNC.
- 4- Compliance History.
- 5- Good faith of the violator.
- 6- Harm caused by the violation.

The City of Rock Spring shall select the appropriate response after considering factors such as those listed above.

Industrial User non-compliance that causes interference with treatment plant performance or pass-through of pollutants, shall be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly.

### **Discovering Violations:**

Violations of the Pretreatment Program may be discovered through:

(i) site inspection, (ii) review of self-monitoring reports, (iii) evaluation of surveillance reports, (iv) building permit reports, (v) business license reports, and (vi) other information sources, such as citizen complaints. The Rock Springs Special Projects and Programs Coordinator will evaluate each of these sources of information to determine the nature and seriousness of each violation.

- 1- Site inspections, self-monitoring reports and surveillance reports will be compiled Quarterly by the Special Projects and Programs Coordinator and reviewed. In addition he will obtain building permit reports and business license reports from the appropriate City departments. These reports will be compared with the list of current non-residential users to determine if there is a need to investigate a specific user.
- 2- Once a violation has been identified, the Special Projects and Programs Coordinator will determine whether the violation poses an imminent danger to the City of Rock Springs Treatment System. Those violations deemed to present an imminent danger to the treatment system will require immediate action. Less significant violations may be resolved in a longer time frame.
- 3- In general, an imminent danger violation is caused by discharge of pollutant(s) such that the nature and/or volume of the pollutant(s) is significant to the point of disrupting the normal operation of the City of Rock Springs collection and treatment system or endanger the health or welfare of Rock Springs City personnel.

- 4- Violations which require enforcement action, but which do not pose an imminent danger may include, but are not limited to:
  - a. Discharge of regulated pollutants in amounts exceeding the established standards and limits.
  - b. No discharge permit.
  - c. Failure to file self-monitoring reports.
  - d. Misrepresentation of information in self monitoring report or questionnaire's.
  - e. Missing information.
  - f. Failure to renew permit.
  - g. Refusal of access for inspection.
  - h. Change in operations or discharge without notification.
- 5- Regardless of the severity of the violation, both the discharger and the respective entity will be notified in writing of the suspected violation.
- 6- In case of imminent danger violation, the discharger will also receive immediate verbal notification and will be requested to take immediate action to remedy the violation.

**Selecting Appropriate Enforcement Action:**

The course of action followed in enforcing a violation will depend on: (i) the speed with which the remedy or combination of remedies is sought, and (ii) the speed with which the violation must be halted or prevented (i.e. is imminent danger present).

**PROBLEM SOLVING**

**ACTIONS:**

- 1- IDENTIFY THE SOURCE AND THE CAUSE
- 2- CONSIDER VARIOUS SOLUTIONS TO PROBLEM
- 3- SELECT THE APPROPRIATE COURSE OF ACTION
- 4- PLAN A SOLUTION
- 5- SELECT PROPER RESOURCES
- 6- ACT
- 7- EVALUATE = DID I TAKE THE PROPER COURSE OF ACTION, AND OR USE THE RIGHT ALTERNATIVE(S)

**INDUSTRIAL USER CONTACT:**

- 1- EXPLAIN THE REGULATIONS
- 2- PRESENT DOCUMENTS SUPPORTING YOUR POSITION
- 3- MENTION OTHER CONTROL AGENCIES CONCERNS
- 4- EXPLAIN YOUR OBLIGATION TO REPORT ANY SIGNIFICANT VIOLATIONS OF THEIR STANDARDS DISCOVERED BY INSPECTION OR BY PAST SAMPLE RESULTS
- 5- EXPLAIN WHAT CORRECTIVE ACTION IS REQUIRED
- 6- DISCUSS INDUSTRY-WIDE REMEDIES
- 7- EXPLAIN WHAT ENFORCEMENT ACTION, (IF ANY), SHALL OR MAY BE TAKEN
- 8- SET COMPLIANCE DATE, AND EXPLAIN WHAT NEEDS TO BE ACCOMPLISHED BY THAT DATE
- 9- GIVE LIST(S) OF KNOWN SERVICES AVAILABLE IN AREA
- 10- EXPLAIN THE REQUIREMENTS OF THEIR PERMIT
- 11- INSURE THAT ALL IS UNDERSTOOD COMPLETELY



- 12- SHOW LEGAL AUTHORITY-CITY ORDINANCE SECTION WHICH APPLY TO VIOLATION
- 13- EXPLAIN THAT ENFORCEMENT ACTION ESCALATION MAY BE REQUIRED FOR FURTHER NON-COMPLIANCE
- 14- THANK THEM FOR THEIR ASSISTANCE IN SOLVING THE PROBLEM

**Litigation:**

To pursue judicial remedies, the City of Rock Springs Special Projects and Programs Coordinator will direct the legal counsel to bring an action in a court of competent jurisdiction. Counsel will then report periodically the progress of the litigation.

If litigation seeks a penalty for violation of a City ordinance pursuant to the agreement between White Mountain Water and Sewer District for enforcement of the ordinance, then the terms of that agreement must be followed in prosecuting the claim.

**Accord and Satisfaction:**

If the user appears cooperative and the circumstances of the violation do not indicate willful misconduct, the City will attempt to negotiate an accord and satisfaction. Ordinarily, this process would begin by inviting the user to explain the facts and circumstances of the violation and propose corrective action. The corrective action, compensation for damage sustained, or other measures could form part of the substance of an accord. The accord should be written to facilitate clarity and definition, and for subsequent evidence. Once the accord is in force, the City will monitor compliance with the accord to assure satisfaction.

**Summary and Conclusions:**

A detailed Enforcement Program has been developed to assist in implementation of the City Industrial Pretreatment Program. All parts and sections of this program are attached herein.

## **DEFINITIONS**

**THE CITY HAS ADOPTED THIS DEFINITION OF S.I.U. FOR THE PURPOSES OF IT'S PROCEDURES MANUAL.**

**S.I.U. IS DEFINED AS:**

- \* ALL CATEGORICAL INDUSTRIAL USERS
- \* ANY NON-CATEGORICAL INDUSTRIAL USER THAT
  - DISCHARGES 25,000 GALLONS PER DAY OR MORE OF PROCESS WASTEWATER ( "PROCESS WASTEWATER" EXCLUDES SANITARY, NON-CONTACT COOLING AND BOILER BLOWDOWN WASTEWATERS)
  - CONTRIBUTES A PROCESS WASTESTREAM WHICH MAKES UP FIVE (5) PERCENT OR MORE OF THE AVERAGE DRY WEATHER HYDRAULIC OR ORGANIC (BOD, TSS, ETC.) CAPACITY OF THE TREATMENT PLANT
  - HAS REASONABLE POTENTIAL, IN THE OPINION OF THE CONTROL OR APPROVAL AUTHORITY, TO ADVERSELY AFFECT THE POTW TREATMENT PLANT (INHIBITION, PASS-THROUGH OF POLLUTANTS, SLUDGE CONTAMINATION, OR ENDANGERMENT OF POTW WORKERS).



1. THE CONTROL AUTHORITY MAY DECIDE TO REMOVE ANY NON-CATEGORICAL INDUSTRIAL USER FROM THE LIST OF S.I.U.'s IF THE INDUSTRIAL FACILITY HAS NO REASONABLE POTENTIAL TO VIOLATE ANY PRETREATMENT STANDARDS (GENERAL AND SPECIFIC PROHIBITIONS OR LOCAL LIMITS).
2. THE APPROVAL AUTHORITY MAY CHOOSE TO REVIEW DELETIONS AND/OR REQUIRE ADDITIONAL FACILITIES TO BE LISTED.
3. THIS DEFINITION IS USED TO IDENTIFY THOSE INDUSTRIAL USERS WHOSE CONTRIBUTION IS LIKELY TO HAVE A SIGNIFICANT IMPACT ON THE TREATMENT PLANT OPERATIONS.
4. S.I.U.'s SHALL PERFORM THE FOLLOWING:
  - A. SELF MONITORING AND REPORTING A MINIMUM OF TWICE/YEAR OR MORE AS REQUIRED BY CONTROL AUTHORITY OR REGULATIONS.
  - B. ALLOW SAMPLING AND INSPECTIONS AT ALL TIMES DURING ITS OPERATING DAY.

**DEFINITION OF SIGNIFICANT VIOLATION:**

A VIOLATION WHICH REMAINS UNCORRECTED 45 DAYS AFTER NOTIFICATION OF NON-COMPLIANCE; WHICH IS PART OF A PATTERN OF NON-COMPLIANCE OVER A TWELVE (12) MONTH PERIOD; WHICH INVOLVES A FAILURE TO ACCURATELY REPORT NON-COMPLIANCE; OR WHICH RESULTED IN THE POTW EXERCISING ITS EMERGENCY AUTHORITY UNDER SECTION 403.8 (f) (1) (vi) [B] OF 40 CFR.

ANY VIOLATION THAT RESULTS IN AN INDUSTRIAL USER BEING IN SIGNIFICANT NON-COMPLIANCE SHALL BE CONSIDERED A SIGNIFICANT VIOLATION.

**THE FOLLOWING IS THE DEFINITION OF SIGNIFICANT NON-COMPLIANCE (SNC) AS USED BY THE EPA AND ADOPTED BY THE CITY OF ROCK SPRINGS INTO IT'S ENFORCEMENT RESPONSE PLAN.**

**DEFINITION OF SNC:**

ANY VIOLATION OF PRETREATMENT REQUIREMENTS (LIMITS, SAMPLING, ANALYSIS, REPORTING AND MEETING COMPLIANCE SCHEDULES, AND REGULATORY DEADLINES) IS AN INSTANCE OF NONCOMPLIANCE FOR WHICH THE INDUSTRIAL USER IS LIABLE FOR ENFORCEMENT, INCLUDING PENALTIES. HOWEVER, THERE IS A NEED TO IDENTIFY VIOLATIONS OR PATTERNS OF VIOLATIONS BY INDUSTRIAL USERS THAT ARE INSTANCES OF SIGNIFICANT NON-COMPLIANCE. THIS CLASSIFICATION ALLOWS THE CONTROL AUTHORITY TO ESTABLISH PRIORITIES FOR FORMAL ENFORCEMENT ACTIONS.

IT IS ALSO THE BASIS FOR REPORTING ON SIGNIFICANT INDUSTRIAL USERS PERFORMANCE IN THE PRETREATMENT PERFORMANCE SUMMARY. THIS GUIDANCE ESTABLISHES A DEFINITION OF SIGNIFICANT NON-COMPLIANCE PATTERNED AFTER CRITERIA USED IN THE NPDES PROGRAM (40 CFR PART 123.45). INSTANCES OF SNC ARE INDUSTRIAL USER VIOLATIONS WHICH MEET ONE OR MORE OF THE FOLLOWING CRITERIA:

1. VIOLATIONS OF WASTEWATER DISCHARGE LIMITS.

- a. CHRONIC VIOLATIONS. SIXTY-SIX PERCENT OR MORE OF THE MEASUREMENTS EXCEED THE SAME DAILY MAXIMUM LIMIT OR THE SAME AVERAGE LIMIT IN A 6-MONTH PERIOD (ANY MAGNITUDE OF EXCEEDANCE).
- b. TECHNICAL REVIEW CRITERIA (TRC) VIOLATIONS. THIRTY-THREE PERCENT OR MORE OF THE MEASUREMENTS EXCEED THE SAME DAILY MAXIMUM LIMIT OR THE SAME AVERAGE LIMIT BY MORE THAN THE TRC IN A 6-MONTH PERIOD.

THERE ARE TWO GROUPS OF TRCs:

GROUP I FOR CONVENTIONAL POLLUTANTS  
(BOD, TSS, FATS, OIL, AND GREASE)

TRC = 1.4

GROUP II ALL OTHER POLLUTANTS "EXCEPT pH" TRC = 1.2

- c. ANY OTHER VIOLATION(S) OF AN EFFLUENT LIMIT (AVERAGE OR DAILY MAXIMUM) THAT THE CONTROL AUTHORITY BELIEVES HAS CAUSED, ALONE OR IN COMBINATION WITH OTHER DISCHARGES, INTERFERENCE (e.g., SLUG LOADS) OR PASS-THROUGH; OR ENDANGERED THE HEALTH OF THE SEWAGE TREATMENT PERSONNEL OR THE PUBLIC.
  - d. ANY DISCHARGE OF A POLLUTANT THAT HAS CAUSED IMMINENT ENDANGERMENT TO HUMAN HEALTH/WELFARE OR THE ENVIRONMENT AND HAS RESULTED IN THE POTWs EXERCISE OF ITS EMERGENCY AUTHORITY TO HALT OR PREVENT SUCH A DISCHARGE.
2. VIOLATIONS OF COMPLIANCE SCHEDULE MILESTONES, CONTAINED IN A LOCAL CONTROL MECHANISM OR ENFORCEMENT ORDER, FOR STARTING CONSTRUCTION, COMPLETING CONSTRUCTION, AND ATTAINING FINAL COMPLIANCE BY 90 DAYS OR MORE AFTER THE SCHEDULE DATE.
3. FAILURE TO PROVIDE REPORTS FOR COMPLIANCE SCHEDULES, SELF-MONITORING DATA, OR CATEGORICAL STANDARDS (BASELINE MONITORING REPORTS, 90-DAY COMPLIANCE REPORTS, AND PERIODIC REPORTS) WITHIN 30 DAYS FROM THE DUE DATE.
4. FAILURE TO ACCURATELY REPORT NON-COMPLIANCE.
5. ANY OTHER VIOLATION OR GROUP OF VIOLATIONS THAT THE CONTROL AUTHORITY CONSIDERS TO BE SIGNIFICANT.



## THE CITY'S ENFORCEMENT AUTHORITIES

The City's authority to take enforcement action against pretreatment program violators is in the Rock Springs Municipal Ordinance. The following options are available and who is responsible for performing those options in the City:

**Informal Enforcement Methods** - A user may be contacted by telephone, in person or by letter to apprise it of a violation and to request compliance with the Ordinance.

### ENFORCEMENT ACTIONS

PHONE CALL  
LETTER OF NOTIFICATION (LON)  
NOTICE OF VIOLATION (NOV)  
ADMINISTRATIVE ORDER (AO)  
CONSENT-COMPLIANCE ORDER (CO)  
SHOW CAUSE HEARING (HR)  
CEASE AND DESIST ORDERS (C&D)  
  
ADMINISTRATIVE FINES (AF)  
  
EMERGENCY SUSPENSIONS (ES)  
  
TERMINATION OF PERMIT  
SEWER BAN (SB)  
  
JUDICIAL REMEDIES (JR)  
INJUNCTIVE RELIEF (IR)  
CIVIL PENALTIES (CP)  
  
CRIMINAL PROSECUTION ACTION (CPA)  
ANNUAL PUBLICATION OF SNC

### RESPONSIBLE FOR ACTION

PROJ. & PROG. COORD.  
PROJ. & PROG. COORD.  
PROJ. & PROG. COORD.  
PROJ. & PROG. COORD.  
PROJ. & PROG. COORD.  
DIRECTOR OF PUBLIC WORKS  
PROJ. & PROG. COORD.,  
CITY ATTORNEY  
PROJ-PROG COORD.,  
CITY ATTORNEY  
PROJ-PROG COORD.,  
CITY ATTORNEY  
PROJ. & PROG. COORD.  
PROJ. & PROG. COORD.,  
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PROJ. & PROG. COORD.,  
CITY ATTORNEY  
CITY ATTORNEY  
PROJ. & PROG. COORD.

### SUPPLEMENTAL ENFORCEMENT ACTIONS

1-PERFORMANCE BONDS  
2-LIABILITY INSURANCE  
3-WATER SUPPLY SEVERANCE  
4-PUBLIC NUISANCES ORDINANCE  
5-INFORMANT REWARDS  
6-CONTRACTOR LISTINGS  
7-HEALTH CODES

CITY ATTORNEY  
CITY ATTORNEY  
DIRECTOR OF PUBLIC WORKS  
CITY ATTORNEY  
DIRECTOR OF PUBLIC WORKS  
DIRECTOR OF PUBLIC WORKS  
CITY ATTORNEY



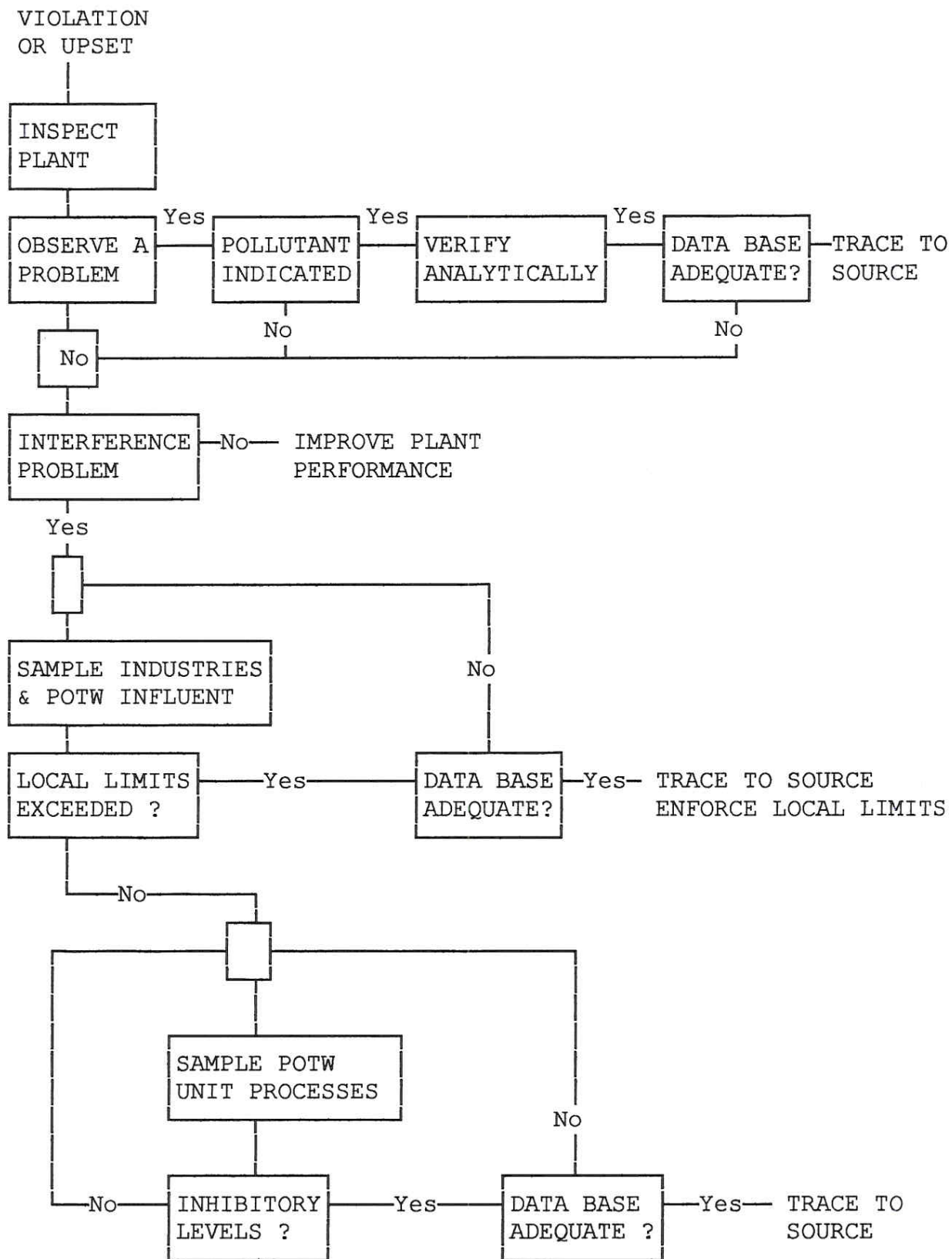
## **INVESTIGATION OF NON-COMPLIANCE**

The following sources of information allow the City to monitor Compliance:

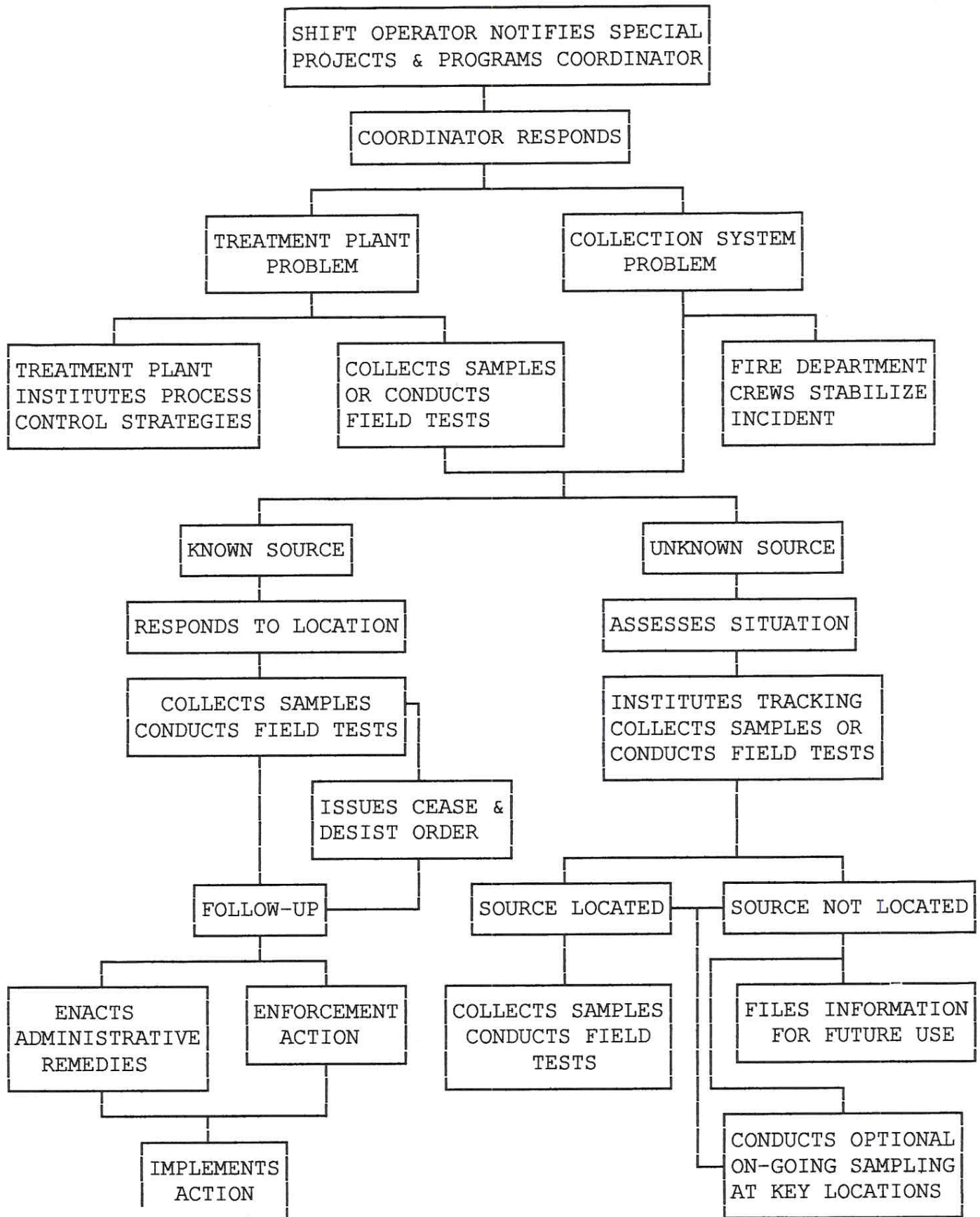
- Industrial User Surveys and Updates
- Periodic Compliance Reports
- Required Self Monitoring Reports
- Inspections, Sampling and testing
- Business License's and Building Permits and Requirements
- Water and Sewer Billing Records
- Pretreatment Compliance Tracking Program
- Public Assistance and Employee's
- Investigations Resulting from POTW Operational Problems
- Flow monitoring by Coordinator and Collection Crews.
- Operational evaluations and pretreatment facility review.
- Materials handling and reporting.
- Compliance and housekeeping history.

These sources must be reviewed regularly to ensure that non-compliance is promptly detected. The Special Projects and Programs Coordinator will be the investigator for the City using the following flow charts:

# TREATMENT PLANT UPSET IDENTIFICATION PROCEDURES

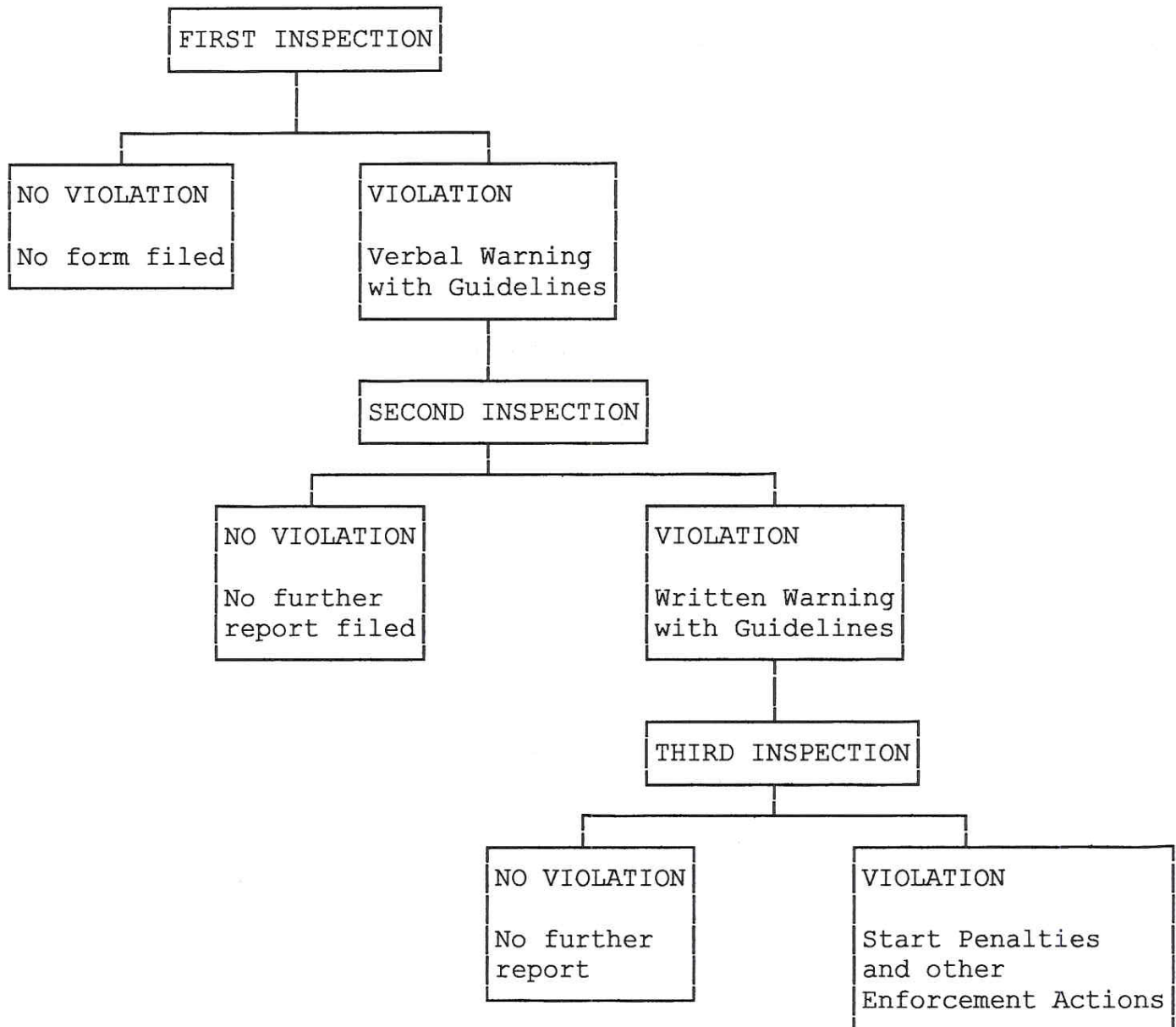


**SPILL/SLUG LOAD SOURCE  
TRACKING PROCEDURE DIAGRAM**





# GREASE TRAP INSPECTION PROCESS



## TIME FRAMES FOR RESPONSE

1. All violations will be identified and documented in a report by the reviewing/inspecting/sampling person (Special Projects and Programs Coordinator) within five (5) working days of receipt of compliance report.
2. Initial enforcement responses will occur within fifteen (15) days of violation detection.
3. Follow-up actions for continuing or recurring violations will be taken within 60 days of the initial enforcement response.
4. Violations which threaten imminent endangerment of health, property or environmental quality are considered emergencies and will receive immediate responses such as ordering the suspension of the discharge or wastewater treatment service.
5. Third time violations may carry the mandatory maximum penalty.
6. At no time shall any violation be allowed to exist longer than a 30 day period with out action being taken.
7. At no time shall a second time violation be allowed to go unattended for more than 15 days without action being taken and a compliance schedule being given.
8. Within 15 days of the identification of any violation, the appropriate response should be determined, and any action taken (or not taken) should be documented.
9. If Significant Non-Compliance continues beyond what is considered a reasonable time period, appropriate formal enforcement action should be initiated.
10. When a problem source has been identified as a cause of violation, the City shall respond in a rapid and aggressive manner to avoid continuing problems or violations.
11. Initial and or final action time should be no longer than (5) five days after noticing a violation.

**CITY OF ROCK SPRINGS PENALTY POLICY  
FOR THE INDUSTRIAL PRETREATMENT PROGRAM**

(ORDINANCE NUMBER 92-22 AND AMENDMENTS THERETO  
PROVIDES FOR PENALTIES UP TO) (\$1,000.00 PER VIOLATION PER DAY.)  
(FOR VIOLATIONS OF ROCK SPRINGS CITY ORDINANCES, PERMIT, RULES, OR  
ORDERS)

(OF THE CITY OF ROCK SPRINGS INDUSTRIAL PRETREATMENT)

**THE FOLLOWING IS DESIGNED TO BE USED AS A LOGICAL BASIS TO DETERMINE  
A REASONABLE AND APPROPRIATE PENALTY FOR ALL TYPES OF VIOLATIONS TO  
PROMOTE RESOLUTION OF ENVIRONMENTAL PROBLEMS AND ENFORCEMENT ACTIONS.**

USING THE FOLLOWING PRINCIPLES:

- 1- PENALTIES SHOULD BE BASED ON THE NATURE AND EXTENT OF THE VIOLATION.
- 2- PENALTIES SHOULD RECOVER THE ECONOMIC BENEFIT OF NONCOMPLIANCE.
- 3- PENALTIES SHOULD BE LARGE ENOUGH TO DETER NONCOMPLIANCE.
- 4- PENALTIES SHOULD BE CONSISTENT IN AN EFFORT TO PROVIDE FAIR AND EQUITABLE TREATMENT OF THE REGULATED COMMUNITY.
- 5- PENALTIES SHOULD RECOVER COSTS INCURRED FROM THE VIOLATION.

**IN DETERMINING WHETHER CIVIL PENALTIES SHOULD BE SOUGHT, THE CITY  
WILL CONSIDER THE FOLLOWING:**

- 1- MAGNITUDE OF VIOLATIONS
- 2- THE DEGREE OF ACTUAL ENVIRONMENTAL HARM OR THE POTENTIAL FOR SUCH HARM CREATED BY THE VIOLATION(S) .
- 3- RESPONSE AND/OR INVESTIGATIVE COSTS INCURRED BY THE CITY AND OTHERS.
- 4- ECONOMIC ADVANTAGE THE VIOLATOR MAY HAVE GAINED THROUGH NONCOMPLIANCE.
- 5- RECIDIVISM OF THE VIOLATOR.
- 6- GOOD FAITH EFFORTS OF THE VIOLATOR.
- 7- THE POSSIBLE DETERRENT EFFECT OF A PENALTY TO PREVENT FUTURE VIOLATIONS.



## PENALTY CALCULATION METHODOLOGY

- 1- STATUTORY MAXIMUM PENALTY SHOULD BE CALCULATED FIRST, MAY BE USED FOR COMPARISON PURPOSES TO PENALTY LEVIED, TO DETERMINE THE POTENTIAL MAXIMUM PENALTY LIABILITY OF THE VIOLATOR.
- 2- THE PENALTY WHICH THE CITY SEEKS IN SETTLEMENT MAY NOT EXCEED THIS STATUTORY MAXIMUM AMOUNT.
- 3- THE CIVIL PENALTY FIGURE FOR SETTLEMENT PURPOSES WILL THEN BE CALCULATED USING THE FOLLOWING FORMULA:

CIVIL PENALTY = PENALTY+ADJUSTMENTS+ECONOMIC & LEGAL CONSIDERATIONS  
PENALTY

## PENALTY

VIOLATIONS ARE GROUPED INTO FOUR MAIN PENALTY CATEGORIES BASED UPON THE NATURE AND SEVERITY OF THE VIOLATION. A PENALTY RANGE IS ASSOCIATED WITH EACH CATEGORY. TO DETERMINE WHERE THE PENALTY AMOUNT WILL FALL WITHIN THAT RANGE CERTAIN FACTORS MUST BE TAKEN INTO ACCOUNT. THE APPLICABILITY OF THE FOLLOWING FACTORS WILL BE DETERMINED ON A CASE-BY-CASE BASIS:

- 1- HISTORY OF COMPLIANCE OR NONCOMPLIANCE.
  - A- HISTORY OF NONCOMPLIANCE INCLUDES CONSIDERATION OF PREVIOUS VIOLATIONS AND DEGREE OF RECIDIVISM.
- 2- DEGREE OF WILLFULNESS AND/OR NEGLIGENCE.
  - A- FACTORS TO BE CONSIDERED INCLUDE HOW MUCH CONTROL THE VIOLATOR HAD OVER AND FORESEEABILITY OF THE EVENTS CONSTITUTING THE VIOLATION.
  - B- WHETHER THE VIOLATOR MADE OR COULD HAVE MADE REASONABLE EFFORTS TO PREVENT THE VIOLATION.
  - C- AND DEGREE OF RECALCITRANCE.
- 3- GOOD FAITH EFFORTS TO COMPLY.
  - A- GOOD FAITH TAKES INTO ACCOUNT THE OPENNESS IN DEALING WITH THE VIOLATIONS.
  - B- PROMPTNESS IN CORRECTION OF PROBLEMS.
  - C- AND THE DIGRESS OF COOPERATION WITH THE CITY.

4- THE FOLLOWING IS AN EXPLANATION OF THE CATEGORIES USED.

**CATEGORY (A) - \$ 700.00 TO \$ 1,000.00 PER DAY PER VIOLATION**  
VIOLATIONS WITH HIGH IMPACT ON PUBLIC HEALTH AND THE ENVIRONMENT TO INCLUDE:

- A- DISCHARGES WHICH RESULT IN DOCUMENTED PUBLIC HEALTH EFFECTS AND/OR SIGNIFICANT ENVIRONMENTAL DAMAGE.
- B- ANY TYPE OF VIOLATION NOT MENTIONED ABOVE SEVERE ENOUGH TO WARRANT A PENALTY ASSESSMENT UNDER CATEGORY A.

**CATEGORY (B) - \$ 200.00 TO \$ 700.00 PER DAY PER VIOLATION**  
MAJOR VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS, PERMITS OR ORDERS TO INCLUDE:

- A- DISCHARGES WHICH LIKELY CAUSED OR POTENTIALLY WOULD CAUSE (UNDOCUMENTED) PUBLIC HEALTH EFFECTS OR SIGNIFICANT ENVIRONMENTAL DAMAGE.
- B- CREATION OF A SERIOUS HAZARD TO PUBLIC HEALTH OR THE ENVIRONMENT.
- C- ILLEGAL DISCHARGES CONTAINING SIGNIFICANT QUANTITIES OR CONCENTRATIONS OF TOXIC OR HAZARDOUS MATERIALS.
- D- ANY TYPE OF VIOLATION NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY B.

**CATEGORY (C) - \$ 50.00 TO \$ 200.00 PER DAY PER VIOLATION**  
VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS, PERMITS, OR ORDERS TO INCLUDE:

- A- SIGNIFICANT EXCURSION OF PERMIT EFFLUENT LIMITS.
- B- SUBSTANTIAL NON-COMPLIANCE WITH THE REQUIREMENTS OF A COMPLIANCE SCHEDULE.
- C- SUBSTANTIAL NON-COMPLIANCE WITH MONITORING AND REPORTING REQUIREMENTS.
- D- ILLEGAL DISCHARGE CONTAINING SIGNIFICANT QUANTITIES OR CONCENTRATIONS OF NON TOXIC OR NON HAZARDOUS MATERIALS.
- E- ANY TYPE OF VIOLATION NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY C.

**CATEGORY (D) - \$ 00.00 UP TO \$ 50.00 PER DAY PER VIOLATION**  
MINOR VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS PERMITS OR ORDERS TO INCLUDE:

- A- MINOR EXCURSION OF PERMIT EFFLUENT LIMITS.
- B- MINOR VIOLATIONS OF COMPLIANCE SCHEDULE REQUIREMENTS.
- C- MINOR VIOLATIONS OF REPORTING REQUIREMENTS.
- D- ILLEGAL DISCHARGES NOT COVERED IN CATEGORIES A, B, C.
- E- ANY TYPE OF VIOLATIONS NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY D.



## **ADJUSTMENTS**

THE CIVIL PENALTY SHALL BE CALCULATED BY ADDING THE FOLLOWING ADJUSTMENTS TO THE PENALTY AMOUNT DETERMINED ABOVE:

- 1- ECONOMIC BENEFIT GAINED AS A RESULT OF NON-COMPLIANCE.
- 2- INVESTIGATIVE COSTS INCURRED BY THE CITY AND/OR OTHER GOVERNMENTAL LEVELS.
- 3- DOCUMENTED MONETARY COSTS ASSOCIATED WITH ENVIRONMENTAL DAMAGE.

## **ECONOMIC AND LEGAL CONSIDERATIONS**

- 1- AN ADJUSTMENT DOWNWARD MAY BE MADE OR A DELAYED PAYMENT SCHEDULE MAY BE USED BASED ON A DOCUMENTED INABILITY OF THE VIOLATOR TO PAY.
- 2- AN ADJUSTMENT DOWNWARD MAY BE MADE IN CONSIDERATION OF THE POTENTIAL FOR PROTRACTED LITIGATION.
- 3- AN ATTEMPT TO ASCERTAIN THE MAXIMUM PENALTY THE COURT IS LIKELY TO AWARD.
- 4- AND/OR THE STRENGTH OF THE CASE.

## **MITIGATION PROJECTS**

IN SOME EXCEPTIONAL CASES IT MAY BE APPROPRIATE TO ALLOW THE REDUCTION OF THE PENALTY ASSESSMENT IN RECOGNITION OF THE VIOLATOR'S GOOD FAITH UNDERTAKING OF AN ENVIRONMENTALLY BENEFICIAL MITIGATION PROJECT. THE FOLLOWING CRITERIA SHOULD BE USED IN DETERMINING THE ELIGIBILITY OF SUCH PROJECTS:

- A- THE PROJECT MUST BE IN ADDITION TO ALL REGULATORY COMPLIANCE OBLIGATIONS.
- B- THE PROJECT PREFERABLY SHOULD CLOSELY ADDRESS THE ENVIRONMENTAL EFFECTS OF THE VIOLATION.
- C- THE ACTUAL COST TO THE VIOLATOR AFTER CONSIDERATION OF TAX BENEFITS MUST REFLECT A DETERRENT EFFECT.
- D- THE PROJECT MUST PRIMARILY BENEFIT THE ENVIRONMENT RATHER THAN BENEFIT THE VIOLATOR.
- E- THE PROJECT MUST BE JUDICIALLY ENFORCEABLE.
- F- THE PROJECT MUST NOT GENERATE POSITIVE PUBLIC PERCEPTION FOR VIOLATIONS OF THE LAW.



THE POLICIES AND PROCEDURES IN THIS DOCUMENT ARE INTENDED SOLELY FOR THE GUIDANCE OF THE CITY. THEY ARE NOT INTENDED, AND CANNOT BE RELIED UPON TO CREATE ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE CITY.

#### ENFORCEMENT ACTIONS AVAILABLE

PHONE CALL

LETTER OF NOTIFICATION (LON)

NOTICE OF VIOLATION (NOV)

ADMINISTRATIVE ORDER (AO) (CONSENT ORDER (CO), COMPLIANCE ORDER)

SHOW CAUSE HEARING (HR)

CEASE AND DESIST ORDERS (C&D)

ADMINISTRATIVE PENALTIES (AP)

EMERGENCY SUSPENSIONS (ES)

TERMINATION OF PERMIT (SEWER BAN) (SB)

JUDICIAL REMEDIES (JR)

INJUNCTIVE RELIEF (IR)

CIVIL PENALTIES (CP)

CRIMINAL PROSECUTION ACTION (CPA)

#### SUPPLEMENTAL ENFORCEMENT ACTIONS (SEA)

- 1- ANNUAL PUBLICATION OF SIGNIFICANT VIOLATIONS
- 2- PERFORMANCE BONDS
- 3- LIABILITY INSURANCE
- 4- WATER SUPPLY SEVERANCE
- 5- PUBLIC NUISANCES ORDINANCE
- 6- INFORMANT REWARDS
- 7- CONTRACTOR LISTINGS
- 8- HEALTH CODE
- 9- COMMUNITY SERVICE
- 10- BUSINESS PERMIT REVOCATION

#### DEFINITIONS OF ACRONYMS

NOV - Notice of Violation

AO - Administrative Order

SNC - Significant NonCompliance as defined in 40 CFR

#### LOCATION OF TERM DEFINITIONS

Show Cause Hearing

Legal Action

Sewer ban

**CITY OF ROCK SPRINGS  
INDUSTRIAL PRETREATMENT PROGRAM  
ENFORCEMENT RESPONSE GUIDE PLAN**

**SECTION I  
SAMPLING, MONITORING, AND REPORTING**

<u>NONCOMPLIANCE OR VIOLATION</u>	<u>CIRCUMSTANCES</u>	<u>RESPONSE</u>
FAILURE TO SAMPLE, MONITOR OR REPORT OR NOTIFY, (MISSING ROUTINE REPORTS, MONITORING, OR SAMPLING)	FIRST TIME	PHONE CALL, NOV, LETTER, & WARNING
IU CONTINUES TO NOT FOLLOW REQUIREMENTS ROUTINELY HEARING	SECOND TIME	PHONE CALL, NOV, LETTER, COMPLIANCE SCHEDULE, IU  FINE
IU DOES NOT RESPOND TO CALLS, LETTERS, OR FOLLOW SEWER THROUGH WITH WRITTEN OR VERBAL AGREEMENTS	THIRD TIME MAJOR PROBLEM  BECOMES SNC & SHALL REQUIRE STIFF ACTION	NOV, SHOW CAUSE HEARING, FINE,  BAN, AO, LEGAL ACTION, COMPLIANCE SCHEDULE
FAILURE TO NOTIFY OF A EFFLUENT LIMIT VIOLATION OR SLUG DISCHARGE, WITHIN 24 HOURS.	FIRST TIME NO KNOWN EFFECTS TO SYSTEM	PHONE CALL, NOV, WARNING, LETTER
FAILURE TO NOTIFY CONTINUES, AND OR CAUSES A PROBLEM OR SERIOUS CONCERN WITH SYSTEM	SECOND TIME OR CAUSING O/M PROBLEMS, BUT NOT VERY SERIOUS	PHONE CALL, NOV, WARNING OF PENDING ACTIONS-I.E. AO, LEGAL, FINE
FAILURE BECOMES CHRONIC,	THIRD TIME OR CAUSING SERIOUS PROBLEMS, CAUSING KNOWN ENVIRONMENTAL OR LIFE HAZARD BECOMES SNC	PHONE CALL, NOV, FINE, LEGAL, SHUT DOWN NOTICE, SEWER BAN
MINOR SAMPLING, MONITORING OR REPORTING DEFICIENCIES (COMPUTATIONAL OR TYPO- GRAPHICAL ERRORS).	FIRST TIME	PHONE CALL, CORRECTION TO BE MADE AND SUBMITTED
CONTINUED DEFICIENCIES OR SECOND OCCURRENCE	SECOND TIME OR MORE SERIOUS PROBLEMS	PHONE CALL, NOV, LETTER, HEARING AO, FINE, AND A RE-SUBMITTAL

CHRONIC DEFICIENCIES  
OR CONTINUED PROBLEMS  
(MISSING REPORTS, OR  
REQUIRED INFORMATION)

THIRD TIME  
OR SERIOUS PROBLEMS  
30 DAYS OR LONGER  
BECOMES SNC

PHONE CALL, NOV,  
LETTER, SHOW CAUSE  
HEARING, FINE, AO,  
COMPLIANCE SCHEDULE  
SEWER BAN, CRIMINAL

**SECTION II**  
**COMPLIANCE SCHEDULES (CONSTRUCTION PHASES, PLANNING, OR  
NONCOMPLIANCE)**

**NONCOMPLIANCE**

**CIRCUMSTANCES**

**RESPONSE**

MISSING COMPLIANCE  
DATES OR FAILURE TO  
FOLLOW REQUIREMENTS

FIRST TIME  
SECOND TIME  
THIRD TIME

HEARING, FINE  
FINE, AO, LEGAL,  
FINE, LEGAL,  
SEWER BAN

REPORTING OF FALSE  
INFORMATION

FIRST TIME

CRIMINAL  
INVESTIGATION,  
LEGAL, FINE,  
SEWER BAN

MISSED INTERIM DATE OF  
COMPLIANCE SCHEDULE

CAUSED BY CONST.  
PROBLEMS, BUT WILL  
NOT INTERFERE WITH  
FINAL COMPLETION  
DATE

NOV, LETTER,  
POSSIBLE FINE  
HEARING

MISSED INTERIM DATE OF  
COMPLIANCE SCHEDULE

RESULTING IN  
MISSING FINAL  
COMPLIANCE DATE

NOV, LETTER  
SHOW CAUSE  
HEARING, FINE

MISSED INTERIM DATE OF  
COMPLIANCE SCHEDULE

NO GOOD OR VALID  
CAUSE BECOMES SNC

NOV, LETTER, SHOW  
CAUSE HEARING,  
FINE, AO, LEGAL

MISSED FINAL DATE  
OF COMPLIANCE  
SCHEDULE

VIOLATION DUE TO  
FORCE MAJEURE, ACT  
OF GOD, ETC.

SHOW CAUSE  
HEARING,  
POSSIBLE FINE

MISSED FINAL DATE  
OF COMPLIANCE  
SCHEDULE

90 DAYS OR MORE  
OUTSTANDING  
FAILURE OR  
REFUSAL TO COMPLY  
WITHOUT GOOD  
OR VALID CAUSE

AO, FINE,  
LEGAL ACTION,  
SEWER BAN

FAILURE TO INSTALL  
REQUIRED MONITORING OR  
SAMPLING EQUIPMENT, ETC.

FIRST 10 DAYS  
AFTER REQUIRED  
DATE, WITH NO  
ACTION BY IU, SNC

NOV, LETTER,  
FINE, HEARING



SECOND 10 DAYS  
AFTER REQUIRED  
DATE, WITH NO  
ACTION BY IU, SNC

NOV, AO, FINE,  
HEARING, LEGAL

THIRD 10 DAYS  
AFTER REQUIRED  
DATE, WITH NO  
ACTION BY IU, SNC

FINE, LEGAL,  
SEWER BAN

### SECTION III EFFLUENT LIMITS

<u>NONCOMPLIANCE EXCEEDING</u>	<u>CIRCUMSTANCES</u>	<u>RESPONSE</u>
FINAL LIMITS (categorical, local or prohibited).	FIRST TIME	PHONE CALL, LETTER NOV, HEARING
	SECOND TIME SNC	PHONE CALL, LETTER, NOV, FINE, HEARING
	THIRD TIME SNC	PHONE CALL, LETTER, NOV, FINE, AO, HEARING, POSSIBLE SEWER BAN
EXCEEDING INTERIM LIMITS (categorical or local) WITHOUT KNOWN DAMAGE	FIRST TIME	NOV, HEARING, LETTER
	SECOND TIME	NOV, HEARING, LETTER, FINE
	THIRD TIME	NOV, HEARING, AO, LEGAL, FINES, SEWER BAN
EXCEEDING INTERIM LIMITS (CATEGORICAL OR LOCAL) WITH KNOWN DAMAGE RESULTING DAMAGE IN KNOWN OR POSSIBLE ENVIRONMENTAL DAMAGE, OR SYSTEM DAMAGE	FIRST TIME SNC	NOV, HEARING, FINE, LETTER, LEGAL, AO REPARATION OF
	SECOND TIME SNC	REPARATION, FINE, NOV, AO, LETTER, LEGAL, HEARING
	THIRD TIME SNC	REPARATION, FINE, LETTER, NOV, AO, LEGAL, HEARING, SEWER BAN

VIOLATION OF EPA LIMITS  
AND OR REQUIREMENTS

ANYTIME  
NO HARM

PERMIT SUSPENSION  
FINE, LEGAL, SEWER  
BAN, HEARING

VIOLATION OF EPA LIMITS

ANYTIME  
KNOWN HARM

LEGAL, FINE, SEWER  
BAN, PERMIT  
REVOCATION

**SECTION IV**  
**SPECIAL CONDITIONS**

**NONCOMPLIANCE**

REPORTED SLUG LOAD OR  
SPILL WITH:  
NO KNOWN DAMAGE

**CIRCUMSTANCES**

FIRST TIME

**RESPONSE**

HEARING, NOV,  
LETTER, COMPLIANCE  
SCHEDULE

SECOND TIME

HEARING, NOV, FINE,  
LETTER, COMPLIANCE  
SCHEDULE, AO

THIRD TIME  
SNC

LETTER, NOV, FINE,  
COMPLIANCE

SCHEDULE,

AO, LEGAL, CRIMINAL  
INVESTIGATION

KNOWN DAMAGE

FIRST TIME  
SNC

HEARING, NOV, FINE,  
COMPLIANCE SCHEDULE  
LETTER, REPARATIONS

SECOND TIME  
SNC

HEARING, NOV, FINE,  
COMPLIANCE

SCHEDULE,

AO, LEGAL, SEWER

BAN

REPARATIONS

THIRD TIME  
SNC

HEARING, NOV, FINE,  
AO, LEGAL, SEWER

BAN

REPARATIONS,  
CRIMINAL  
INVESTIGATION

UNREPORTED SLUG LOADS OR  
SPILLS WITH OR WITH OUT

ANY TIME  
SNC

NOV, FINE, LEGAL,  
CRIMINAL DAMAGE  
INVESTIGATION  
SEWER BAN

**SECTION IV (CONT.)  
SPECIAL CONDITIONS**

<u>NONCOMPLIANCE</u>	<u>CIRCUMSTANCES</u>	<u>RESPONSE</u>
DISCHARGE WITHOUT A PERMIT OR APPROVAL WITH OR WITHOUT KNOWN DAMAGE, SNC	ONE TIME WITHOUT KNOWN ENVIRONMENTAL OR SYSTEM DAMAGE	HEARING, NOV, FINE PERMIT, COMPLIANCE SCHEDULE, AO, LEGAL
	ONE TIME THAT RESULTS IN ENVIRONMENTAL OR SYSTEM DAMAGE	HEARING, NOV, FINE PERMIT, LEGAL, AO, COMPLIANCE SCHEDULE, SEWER BAN
	CONTINUED VIOLATION WITH KNOWN SYSTEM OR ENVIRONMENTAL DAMAGE, SNC.	NOV, FINE, LEGAL AND CRIMINAL ACTION TAKEN, SEWER BAN
FAILURE TO PAY COSTS, OR SURCHARGES	FIRST TIME	WARNING NOV LETTER EXPLAINING RESPONSIBILITIES, FINE
	SECOND TIME	NOV, AO, SHOW CAUSE HEARING, SEWER BAN, LEGAL ACTION, FINE
	THIRD TIME	LEGAL ACTION, SEWER BAN, PERMIT REVOCATION WITH HIGH REINSTATEMENT FEE, FINE
FAILURE TO INSTALL OR MAINTAIN REQUIRED EQUIPMENT	ANYTIME	NOV, FINE, LETTER HEARING, PERMIT SUSPENSION OR REVOCATION, SEWER BAN, LEGAL, AO
DISCHARGE WITHOUT A PERMIT	ANYTIME	FINE, LEGAL, SEWER BAN OR A VALID HIGH PERMIT FEE



SECTION V  
NONCOMPLIANCE DETECTED THROUGH INSPECTION  
AND OR FIELD INVESTIGATIONS

<u>NONCOMPLIANCE</u>	<u>CIRCUMSTANCES</u>	<u>RESPONSE</u>
MINOR VIOLATIONS OF ANALYTICAL PROCEDURES	ANY INSTANCE	NOV, LETTER, FINE
MAJOR VIOLATIONS OF LETTER, HEARING, ANALYTICAL PROCEDURES	NO EVIDENCE OF INTENT	NOV, AO, FINE
"	EVIDENCE OF INTENT OR NEGLIGENCE, SNC	AO, LEGAL, FINE, NOV SEWER BAN, HEARING
MINOR VIOLATION OF PERMIT FINE, LETTER CONDITION	NO EVIDENCE OF NEGLIGENCE OR INTENT	NOV, AO,
"	EVIDENCE OF INTENT NEGLIGENCE, SNC	AO, NOV, HEARING, SEWER BAN, REVOCATION OF
PERMIT		
MAJOR VIOLATION OF PERMIT CONDITION.	EVIDENCE OF INTENT NEGLIGENCE, SNC	AO, FINE, HEARING, CIVIL AND CRIMINAL, SEWER BAN, PERMIT REVOCATION

# **INDUSTRIAL USER TYPES AND CLASSIFICATIONS**

(as used by the City of Rock Springs)

## **TYPES OF INDUSTRIAL USERS**

- 1- CATEGORICAL (DISCHARGER)
- 2- CATEGORICAL (NON-DISCHARGER)
- 3- SIGNIFICANT INDUSTRIAL USER (DISCHARGER)
- 4- SIGNIFICANT INDUSTRIAL USER (NON-DISCHARGER)
- 5- NON-SIGNIFICANT INDUSTRIAL USER (DISCHARGER)
- 6- NON-SIGNIFICANT INDUSTRIAL USER (NON-DISCHARGER)
- 7- NON-PERMITTED INDUSTRIAL USER (OF NO CONCERN)

## **CLASSIFICATIONS OF DISCHARGERS**

- 1- INDUSTRIAL
- 2- COMMERCIAL
- 3- RESIDENTIAL

**CITY OF ROCK SPRINGS  
PENALTY POLICY  
FOR THE  
INDUSTRIAL PRETREATMENT PROGRAM**

(ORDINANCE NUMBER 92-22 AND AMMENDMENTS THERETO PROVIDES FOR PENALTIES UP TO) (\$1,000.00 PER VIOLATION PER DAY.) (FOR VIOLATIONS OF ROCK SPRINGS CITY ORDINANCES, PERMIT, RULES, OR ORDERS) (OF THE CITY OF ROCK SPRINGS INDUSTRIAL PRETREATMENT)

**THE FOLLOWING IS DESIGNED TO BE USED AS A LOGICAL BASIS TO DETERMINE A REASONABLE AND APPROPRIATE PENALTY FOR ALL TYPES OF VIOLATIONS TO PROMOTE RESOLUTION OF ENVIRONMENTAL PROBLEMS AND ENFORCEMENT ACTIONS.**

**USING THE FOLLOWING PRINCIPLES:**

- 1- PENALTIES SHOULD BE BASED ON THE NATURE AND EXTENT OF THE VIOLATION.
- 2- PENALTIES SHOULD RECOVER THE ECONOMIC BENEFIT OF NONCOMPLIANCE.
- 3- PENALTIES SHOULD BE LARGE ENOUGH TO DETER NONCOMPLIANCE.
- 4- PENALTIES SHOULD BE CONSISTENT IN AN EFFORT TO PROVIDE FAIR AND EQUITABLE TREATMENT OF THE REGULATED COMMUNITY.
- 5- PENALTIES SHOULD RECOVER COSTS INCURRED FROM THE VIOLATION.

**IN DETERMINING WEATHER CIVIL PENALTIES SHOULD BE SOUGHT, THE CITY WILL CONSIDER THE FOLLOWING:**

- 1- MAGNITUDE OF VIOLATIONS
- 2- THE DEGREE OF ACTUAL ENVIRONMENTAL HARM OR THE POTENTIAL FOR SUCH HARM CREATED BY THE VIOLATION(S).
- 3- RESPONSE AND/OR INVESTIGATIVE COSTS INCURRED BY THE CITY AND OTHERS.
- 4- ECONOMIC ADVANTAGE THE VIOLATOR MAY HAVE GAINED THROUGH NONCOMPLIANCE.
- 5- RECIDIVISM OF THE VIOLATOR.
- 6- GOOD FAITH EFFORTS OF THE VIOLATOR.
- 7- THE POSSIBLE DETERRENT EFFECT OF A PENALTY TO PREVENT FUTURE VIOLATIONS.

**PENALTY CALCULATION METHODOLOGY**

- 1- STATUTORY MAXIMUM PENALTY SHOULD BE CALCULATED FIRST, MAY BE USED FOR COMPARISON PURPOSES TO PENALTY LEVIED, TO DETERMINE THE POTENTIAL MAXIMUM PENALTY LIABILITY OF THE VIOLATOR.
- 2- THE PENALTY WHICH THE CITY SEEKS IN SETTLEMENT MAY NOT EXCEED THIS STATUTORY MAXIMUM AMOUNT.
- 3- THE CIVIL PENALTY FIGURE FOR SETTLEMENT PURPOSES WILL THEN BE CALCULATED USING THE FOLLOWING FORMULA:

**CIVIL PENALTY = PENALTY+ADJUSTMENTS+ECONOMIC & LEGAL CONSIDERATIONS PENALTY**



## PENALTY

VIOLATIONS ARE GROUPED INTO FOUR MAIN PENALTY CATEGORIES BASED UPON THE NATURE AND SEVERITY OF THE VIOLATION. A PENALTY RANGE IS ASSOCIATED WITH EACH CATEGORY. TO DETERMINE WHERE THE PENALTY AMOUNT WILL FALL WITHIN THAT RANGE CERTAIN FACTORS MUST BE TAKEN INTO ACCOUNT. THE APPLICABILITY OF THE FOLLOWING FACTORS WILL BE DETERMINED ON A CASE-BY-CASE BASIS:

- 1- HISTORY OF COMPLIANCE OR NONCOMPLIANCE.
  - A- HISTORY OF NONCOMPLIANCE INCLUDES CONSIDERATION OF PREVIOUS VIOLATIONS AND DEGREE OF RECIDIVISM.
- 2- DEGREE OF WILLFULNESS AND/OR NEGLIGENCE.
  - A- FACTORS TO BE CONSIDERED INCLUDE HOW MUCH CONTROL THE VIOLATOR HAD OVER AND FORESEEABILITY OF THE EVENTS CONSTITUTING THE VIOLATION.
  - B- WHETHER THE VIOLATOR MADE OR COULD HAVE MADE REASONABLE EFFORTS TO PREVENT THE VIOLATION.
  - C- AND DEGREE OF RECALCITRANCE.
- 3- GOOD FAITH EFFORTS TO COMPLY.
  - A- GOOD FAITH TAKES INTO ACCOUNT THE OPENNESS IN DEALING WITH THE VIOLATIONS.
  - B- PROMPTNESS IN CORRECTION OF PROBLEMS.
  - C- AND THE DIGRESS OF COOPERATION WITH THE CITY.
- 4- THE FOLLOWING IS AN EXPLANATION OF THE CATEGORIES USED.

### CATEGORY (A) - \$ 700.00 TO \$ 1,000.00 PER DAY PER VIOLATION

VIOLATIONS WITH HIGH IMPACT ON PUBLIC HEALTH AND THE ENVIRONMENT TO INCLUDE:

- A- DISCHARGES WHICH RESULT IN DOCUMENTED PUBLIC HEALTH EFFECTS AND/OR SIGNIFICANT ENVIRONMENTAL DAMAGE.
- B- ANY TYPE OF VIOLATION NOT MENTIONED ABOVE SEVERE ENOUGH TO WARRANT A PENALTY ASSESSMENT UNDER CATEGORY A.

### CATEGORY (B) - \$ 200.00 TO \$ 700.00 PER DAY PER VIOLATION

MAJOR VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS, PERMITS OR ORDERS TO INCLUDE:

- A- DISCHARGES WHICH LIKELY CAUSED OR POTENTIALLY WOULD CAUSE (UNDOCUMENTED) PUBLIC HEALTH EFFECTS OR SIGNIFICANT ENVIRONMENTAL DAMAGE.
- B- CREATION OF A SERIOUS HAZARD TO PUBLIC HEALTH OR THE ENVIRONMENT.
- C- ILLEGAL DISCHARGES CONTAINING SIGNIFICANT QUANTITIES OR CONCENTRATIONS OF TOXIC OR HAZARDOUS MATERIALS.
- D- ANY TYPE OF VIOLATION NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY B.

### CATEGORY (C) - \$ 50.00 TO \$ 200.00 PER DAY PER VIOLATION

VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS, PERMITS, OR ORDERS TO INCLUDE:

- A- SIGNIFICANT EXCURSION OF PERMIT EFFLUENT LIMITS.
- B- SUBSTANTIAL NON-COMPLIANCE WITH THE REQUIREMENTS OF A COMPLIANCE SCHEDULE.
- C- SUBSTANTIAL NON-COMPLIANCE WITH MONITORING AND REPORTING REQUIREMENTS.
- D- ILLEGAL DISCHARGE CONTAINING SIGNIFICANT QUANTITIES OR CONCENTRATIONS OF NON TOXIC OR NON HAZARDOUS MATERIALS.
- E- ANY TYPE OF VIOLATION NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY C.

### CATEGORY (D) - \$ 00.00 UP TO \$ 50.00 PER DAY PER VIOLATION

MINOR VIOLATIONS OF THE CITY ASSOCIATED REGULATIONS PERMITS OR ORDERS TO INCLUDE:

- A- MINOR EXCURSION OF PERMIT EFFLUENT LIMITS.
- B- MINOR VIOLATIONS OF COMPLIANCE SCHEDULE REQUIREMENTS.

- C- MINOR VIOLATIONS OF REPORTING REQUIREMENTS.
- D- ILLEGAL DISCHARGES NOT COVERED IN CATEGORIES A, B, C.
- E- ANY TYPE OF VIOLATIONS NOT MENTIONED PREVIOUSLY WHICH WARRANTS A PENALTY ASSESSMENT UNDER CATEGORY D.

### **ADJUSTMENTS**

THE CIVIL PENALTY SHALL BE CALCULATED BY ADDING THE FOLLOWING ADJUSTMENTS TO THE PENALTY AMOUNT DETERMINED ABOVE:

- 1- ECONOMIC BENEFIT GAINED AS A RESULT OF NON-COMPLIANCE.
- 2- INVESTIGATIVE COSTS INCURRED BY THE CITY AND/OR OTHER GOVERNMENTAL LEVELS.
- 3- DOCUMENTED MONETARY COSTS ASSOCIATED WITH ENVIRONMENTAL DAMAGE.

### **ECONOMIC AND LEGAL CONSIDERATIONS**

- 1- AN ADJUSTMENT DOWNWARD MAY BE MADE OR A DELAYED PAYMENT SCHEDULE MAY BE USED BASED ON A DOCUMENTED INABILITY OF THE VIOLATOR TO PAY.
- 2- AN ADJUSTMENT DOWNWARD MAY BE MADE IN CONSIDERATION OF THE POTENTIAL FOR PROTRACTED LITIGATION.
- 3- AN ATTEMPT TO ASCERTAIN THE MAXIMUM PENALTY THE COURT IS LIKELY TO AWARD.
- 4- AND/OR THE STRENGTH OF THE CASE.

### **MITIGATION PROJECTS**

IN SOME EXCEPTIONAL CASES IT MAY BE APPROPRIATE TO ALLOW THE REDUCTION OF THE PENALTY ASSESSMENT IN RECOGNITION OF THE VIOLATOR'S GOOD FAITH UNDERTAKING OF AN ENVIRONMENTALLY BENEFICIAL MITIGATION PROJECT. THE FOLLOWING CRITERIA SHOULD BE USED IN DETERMINING THE ELIGIBILITY OF SUCH PROJECTS:

- A- THE PROJECT MUST BE IN ADDITION TO ALL REGULATORY COMPLIANCE OBLIGATIONS.
- B- THE PROJECT PREFERABLY SHOULD CLOSELY ADDRESS THE ENVIRONMENTAL EFFECTS OF THE VIOLATION.
- C- THE ACTUAL COST TO THE VIOLATOR AFTER CONSIDERATION OF TAX BENEFITS MUST REFLECT A DETERRENT EFFECT.
- D- THE PROJECT MUST PRIMARILY BENEFIT THE ENVIRONMENT RATHER THAN BENEFIT THE VIOLATOR.
- E- THE PROJECT MUST BE JUDICIALLY ENFORCEABLE.
- F- THE PROJECT MUST NOT GENERATE POSITIVE PUBLIC PERCEPTION FOR VIOLATIONS OF THE LAW.

THE POLICIES AND PROCEDURES IN THIS DOCUMENT ARE INTENDED SOLELY FOR THE GUIDANCE OF THE CITY. THEY ARE NOT INTENDED, AND CANNOT BE RELIED UPON TO CREATE ANY RIGHTS, SUBSTANTIVE OR PROCEDURAL, ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE CITY.



- 1- INITIAL AND OR FINAL ACTION TIME SHOULD BE NO LONGER THAN (5) FIVE DAYS AFTER NOTICING A VIOLATION.
- 2- AT NO TIME SHOULD INDUSTRIAL USER BE GIVEN A CHOICE OF OPTIONS OR BE MADE TO SIGN IN AGREEMENT.
- 3- ALL ACTIONS OR NOTICES SHALL BE GIVEN VERBALLY AND IN WRITTEN CONTEXT.
- 4- ALL INCIDENTS OF NON-COMPLIANCE SHALL BE FOLLOWED UP TO INSURE THAT COMPLIANCE HAS BEEN ACHIEVED.
- 5- A PHONE CALL TO INDUSTRIAL USER SHALL BE MADE TO NOTIFY THE INDUSTRIAL USER OF HIS CURRENT COMPLIANCE PROBLEM.
- 6- A TIME SCHEDULE OF EVENTS (BETWEEN ENFORCEMENT ACTIONS) SHOULD BE IN PLACE TO INSURE QUICK COMPLIANCE ON THE PART OF BOTH PARTIES.
- 7- THE USE OF FINES IN CERTAIN CASES SHALL BE REQUIRED IN ORDER TO RECOVER COSTS AND PREVENT ECONOMIC BENEFIT TO THE I.U..
- 8- FINES SHOULD BE LEVIED ON A CASE BY CASE BASIS.
- 9- A NON-COMPLIANCE ACTION SCHEDULE SHOULD BE IN PLACE TO SHOW NEXT STEPS AVAILABLE OR REQUIRED, (PART OF # 6), (GUIDE PLAN)
- 10- A LIST OF NON-COMPLIANCE ITEMS COULD BE MADE UP AS A GUIDE.
- 11- EVERY VIOLATION SHOULD RECIEVE A NOTICE OF VIOLATION FORM AND BE RECORDED IN A LOG BOOK.
- 12- FINES, ACTIONS SHOULD BE LEVIED USING THE FOLLOWING PARAMETERS: I.U. HISTORY, LITIGATION CONSIDERATIONS, ECONOMIC BENEFIT, INTENT, IMPACT OF PROBLEM-(ie-ordinance, environmental), ABILITY TO PAY, ABILITY TO COMPLY, WILLINGNESS TO COMPLY.
- 13- ALL OF THE ENFORCEMENT RESPONSE GUIDE PLAN SHOULD BE INCLUDED IN CITY ORDINANCE'S.
- 14- AN INDUSTRIAL WASTE ORDINANCE SHOULD BE DEVELOPED ?
- 15- IS THE UNIFORM PLUMBING CODE REFERENCED IN OUR ORDINANCE'S ?
- 16- LEGAL AUTHORITY SHOULD BE CHECKED TO INSURE ALL ASPECTS OF PROGRAM ARE COVERED.
- 17- ANY VIOLATION OF A PERMIT COMPLIANCE SCHEDULE SHOULD HAVE THE MAXIMUM FINE AMOUNT LEVIED, WITH NO EXCEPTIONS.
- 18- THE STATEMENT OF ANY AND ALL INDUSTRIAL USERS SHOULD APPLY TO ALL THE INDUSTRIAL USERS, LET NONE SLIP THROUGH THE SYSTEM, THIS SHOULD BE IN THE ORDINANCE.
- 19- A LIST OF ILLEGAL DISCHARGE ITEMS IS TO BE MADE UP AS A REFERENCE AND SHOULD BE SENT TO ALL INDUSTRIAL USERS AND ALL OTHER DISCHARGERS OF CONCERN.
- 20- PERMIT FEES SHOULD BE HIGHER FOR PROBLEM I.U.'S, USING PAST HISTORY FOR CURRENT DETERMINATION.

**IF A REVIEW BOARD IS USED:**

- 1- A REVIEW BOARD SHOULD BE USED TO DETERMINE ACTIONS TO BE TAKEN IN THE EVENT OF NON-COMPLIANCE.
- 2- THE REVIEW BOARD SHOULD CONSIST OF THE PRETREATMENT COORDINATOR, THE CITIES ASSIGNED ATTORNEY, TWO INDUSTRIAL USERS, AND A CITIZEN OF ROCK SPRINGS CITY, AND/OR THE PUBLIC SERVICES DIRECTOR, AND/OR THE WATER RECLAMATION PLANT SUPERVISOR.
- 3- AN INDUSTRIAL USER STATUS REPORT SHOULD BE GIVEN TO THE BOARD, AND SENT TO EACH INDUSTRIAL USER TO KEEP THEM UPDATED.
- 4- BOARD MEMBERS SHOULD BE ABLE TO MEET WITHIN (3) THREE DAYS OF A VIOLATION DATE, OR THE DATE IT WAS LISTED ON.